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8                   UNITED STATES DISTRICT COURT  
9                   WESTERN DISTRICT OF WASHINGTON  
10                  AT TACOMA

11                  JOSHUA GRAHAM,

12                  v.  
13                  Plaintiff,

14                  D BASSHAM et al.,

15                  Defendants.

16                  CASE NO. 3:16-cv-05597 BHS-JRC

17                  ORDER DIRECTING SERVICE OF  
18                  CIVIL RIGHTS COMPLAINT –  
19                  DEFENDANT ESCAPULE

20                  This is a civil rights action brought pursuant to 42 U.S.C. § 1983. Plaintiff is proceeding  
21                  with this action *pro se* and *in forma pauperis*. Plaintiff is currently incarcerated at the Clallam  
22                  Bay Corrections Center and is subject to Mandatory Electronic E-Filing pursuant to General  
23                  Orders 02-15 and 06-16. The Court, having reviewed plaintiff's complaint, hereby **ORDERS** as  
24                  follows:

25                  (1)     Service by Clerk

26                  The Clerk is directed to send the following to defendant Edith Escapule by e-mail a copy  
27                  of plaintiff's complaint, a copy of this Order, two copies of the notice of lawsuit and request for  
28                  waiver of service of summons, and a waiver of service of summons.

1                   (2)     Response Required

2                 Defendant(s) shall have **thirty (30) days** within which to return the enclosed waiver of  
3 service of summons. A defendant who timely returns the signed waiver shall have **sixty (60)**  
4 **days** after the date designated on the notice of lawsuit to file and serve an answer to the  
5 complaint or a motion permitted under Rule 12 of the Federal Rules of Civil Procedure.

6                 A defendant who fails to timely return the signed waiver will be personally served with a  
7 summons and complaint, and may be required to pay the full costs of such service, pursuant to  
8 Rule 4(d)(2) of the Federal Rules of Civil Procedure. A defendant who has been personally  
9 served shall file an answer or motion permitted under Rule 12 within **thirty (30) days** after  
10 service.

11                  (3)     Filing and Service by Parties, Generally

12                 All attorneys admitted to practice before this Court are required to file documents  
13 electronically via the Court's CM/ECF system. Counsel are directed to the Court's website,  
14 [www.wawd.uscourts.gov](http://www.wawd.uscourts.gov), for a detailed description of the requirements for filing via CM/ECF.  
15 Plaintiff shall file all documents electronically. All filings must indicate in the upper right hand  
16 corner the name of the magistrate judge to whom the document is directed.

17                 Any document filed with the Court must be accompanied by proof that it has been served  
18 upon all parties that have entered a notice of appearance in the underlying matter. Plaintiffs shall  
19 indicate the date the document is submitted for e-filing as the date of service.

20                  (4)     Non-State Defendants

21                 As a registered user of the Court's electronic filing system, you must accept electronic  
22 service of all court filings (**except** original service of a complaint) by prisoner litigants housed at  
23 the Washington State Penitentiary (WSP), Stafford Creek Corrections Center (SCCC), Coyote

1 Ridge Corrections Center (CRCC), or Monroe Correctional Complex (MCC) who are subject to  
2 Mandatory Electronic E-Filing. WSP, SCCC, CRCC, and MCC prisoner litigants are no longer  
3 required to serve their court filings on the Court or defendants by mail. Service by mail of your  
4 court filings to WSP, SCCC, and CRCC prisoner litigants is also no longer required.

5           (5)     Motions, Generally

6           Any request for court action shall be set forth in a motion, properly filed and served.

7 Pursuant to LCR 7(b), any argument being offered in support of a motion shall be submitted as a  
8 part of the motion itself and not in a separate document. The motion shall include in its caption  
9 (immediately below the title of the motion) a designation of the date the motion is to be noted for  
10 consideration upon the Court's motion calendar.

11           Stipulated and agreed motions, motions to file over-length motions or briefs, motions for  
12 reconsideration, joint submissions pursuant to the option procedure established in LCR 37(a)(2),  
13 motions for default, requests for the clerk to enter default judgment, and motions for the court to  
14 enter default judgment where the opposing party has not appeared shall be noted for  
15 consideration on the day they are filed. *See* LCR 7(d)(1). All other non-dispositive motions  
16 shall be noted for consideration no earlier than the third Friday following filing and service of the  
17 motion. *See* LCR 7(d)(3). All dispositive motions shall be noted for consideration no earlier  
18 than the fourth Friday following filing and service of the motion. *Id.*

19           For electronic filers, all briefs and affidavits in opposition to either a dispositive or non-  
20 dispositive motion shall be filed and served not later than 11:59 p.m. on the Monday  
21 immediately preceding the date designated for consideration of the motion.

1       The party making the motion may electronically file and serve not later than 11:59 p.m.  
2 on the date designated for consideration of the motion, a reply to the opposing party's briefs and  
3 affidavits.

4                     (6)     Motions to Dismiss and Motions for Summary Judgment

5       Parties filing motions to dismiss pursuant to Rule 12 of the Federal Rules of Civil  
6 Procedure and motions for summary judgment pursuant to Rule 56 of the Federal Rules of Civil  
7 Procedure should acquaint themselves with those rules. As noted above, these motions shall be  
8 noted for consideration no earlier than the fourth Friday following filing and service of the  
9 motion.

10      Defendants filing motions to dismiss based on a failure to exhaust or motions for  
11 summary judge are advised that they MUST serve a *Rand* notice concurrently with motions to  
12 dismiss based on a failure to exhaust and motions for summary judgment so that *pro se* prisoner  
13 plaintiffs will have fair, timely and adequate notice of what is required of them in order to  
14 oppose those motions. *Woods v. Carey*, 684 F.3d 934, 941 (9th Cir. 2012). The Ninth Circuit  
15 has set forth model language for such notices:

16      A motion for summary judgment under Rule 56 of the Federal Rules of  
17 Civil Procedure will, if granted, end your case.

18      Rule 56 tells you what you must do in order to oppose a motion for summary  
19 judgment. Generally, summary judgment must be granted when there is no  
20 genuine issue of material fact – that is, if there is no real dispute about any  
21 fact that would affect the result of your case, the party who asked for  
22 summary judgment is entitled to judgment as a matter of law, which will  
23 end your case. When a party you are suing makes a motion for summary  
24 judgment that is properly supported by declarations (or other sworn  
testimony), you cannot simply rely on what your complaint says. Instead,  
**you must set out specific facts in declarations, depositions, answers to  
interrogatories, or authenticated documents, as provided in Rule 56(e),  
that contradict the facts shown in the defendant's declarations and  
documents and show that there is a genuine issue of material fact for  
trial. If you do not submit your own evidence in opposition, summary**

**judgment, if appropriate, may be entered against you. If summary judgment is granted, your case will be dismissed and there will be no trial.**

*Rand v. Rowland*, 154 F.3d 952, 963 (9th Cir. 1998) (emphasis added).

Defendants who fail to file and serve the required *Rand* notice on plaintiff may have their motion stricken from the Court's calendar with leave to re-file.

(7) Direct Communications with District Judge or Magistrate Judge

No direct communication is to take place with the District Judge or Magistrate Judge with regard to this case. All relevant information and papers are to be directed to the Clerk.

(8) The Clerk is directed to send copies of this Order to plaintiff.

Dated this 30th day of May, 2017.

J. Ward (matins)

J. Richard Creatura  
United States Magistrate Judge